



December 11, 2018

BY ELECTRONIC MAIL

Jessie Gomez
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Re: November 27, 2018 Public Records Request

Dear Ms. Gomez:

This letter is written in response to your request for records under the Massachusetts Public Records Law, G.L. c. 66, § 10. In your email received November 27, 2018, you requested the following:

1. A list of all identified illegally operated and unlicensed Marijuana Businesses in the state.
2. Any and all reports identifying illegally operated and unlicensed Marijuana Businesses in the state.
3. Any and all documentation or reports to tackle, identify, and/or shut down illegally operated and unlicensed Marijuana Businesses in the state.

Response to Items 1 and 3

After a substantial search, the Cannabis Control Commission (Commission) has identified no records responsive to your request in its possession, custody or control.

Response to Item 2

The requested documents are the subject of/connected to ongoing investigation by the Commission's enforcement staff, the disclosure of which would jeopardize the integrity of the investigation. Therefore, we consider them exempt under the investigatory exemption, as well as the privacy exemption, of the Public Records Law. G.L. c. 4, § 7(26)(c) and (f).

The Commission is the state agency exclusively authorized by the Legislature to license Marijuana Establishments, and when necessary, enforce compliance with the adult-use marijuana laws. G.L. c. 94G, § 4. As mandated by G.L. c. 94G, § 4(a)(xv), the Commission must "conduct investigations into the qualifications of [...] all applicants for licensure."

The Commission receives tips or reports from members of the public to potential violations of the marijuana laws. Upon receiving such reports, the Commission will investigate

in accordance with G.L. c. 94G, § 4(a)(xv) for compliance with the marijuana laws. In addition, the Commission may “refer cases for criminal prosecution to the appropriate federal, state or local authorities.” G.L. c. 94G, § 4(a)(xxv).

The Commission is in possession of several such reports, received via email and a memorandum prepared by enforcement staff. These records are subject to ongoing investigation by the Commission or contain confidential investigative techniques. In addition, information memorialized in the memorandum has been referred to local law enforcement in accordance with G.L. c. 94G, § 4(a)(xxv).

Relying on Exemption (f), the records fall within the investigatory exemption because it is investigatory material relating to an open matter under review that is necessarily compiled out of public view. The untimely disclosure of these materials would prejudice the enforcement staffs’ ability to investigate alleged noncompliance with the marijuana laws. In addition, the records at issue may be subject to further referral to local law enforcement. Disclosure at this time may prejudice or jeopardize future enforcement investigations.

The Commission has an interest in encouraging individuals and entities to cooperate with its investigative processes without apprehension that such information would be made public prior to the completion of its process. Such disclosure may have a chilling effect on future informants or complainants divulging information to the Commission. Exemption (f) is intended to allow investigative officials to provide an assurance of confidentiality to individuals so that they will speak openly about matters under investigation. Bougas v. Chief of Police of Lexington, 371 Mass 62 (1976).

Furthermore, disclosure could potentially alert subjects to the movement and activities of the Commission’s investigative staff. As such, “a records custodian may withhold any information relating to an ongoing investigation that could potentially alert suspects to the activities of investigative officials.” Guide to the Massachusetts Public Records Law (Sec’y of Commonwealth, rev. January 2017) at 19.

In addition, the memorandum contains confidential investigative techniques, which if disclosed, could be prejudicial to future enforcement activities by the Commission. See Bougas, 371 Mass. at 59, 62 (Confidential investigative techniques may be withheld indefinitely if disclosure is deemed to be prejudicial to future enforcement activities).

Lastly, releasing unexplored or incomplete, possibly erroneous, information would not serve the interests of the public, the emerging cannabis industry, or state and municipal officials, whom rely on this process.



Additionally, Exemption (c) protects personal information including: marital status, paternity, substance abuse, government assistance, family disputes and reputation. G. L. c. 4, § 7(26)(c). See People for the Ethical Treatment of Animals (PETA) v. Dep't of Agric. Res., 477 Mass. 292 n.13 (2017); see also Doe v. Registrar of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988).

Accordingly, disclosure of the identities of those persons undergoing review prior to the conclusion of the investigation would constitute an unwarranted invasion of privacy. These individuals may be subject to unfavorable scrutiny, reflecting on the reputation of each person. In addition, it is unlikely the information contained in these records is available from other sources.

In Closing

If you object to this response to your request, you may appeal to the Supervisor of Records in accordance with G.L. c. 66, §10A(a). In addition, you have the right to seek judicial review by commencing civil action in Suffolk Superior Court pursuant to G.L. c. 66, §10A(c).

Best regards,


Andrew Carter, Esq.

Records Access Officer